

REMARKS

Claims 1-3, 5-7, 9-14, and 16-19 were pending. By this Amendment, claims 1-2, 5-6, 9-13, 16, and 18 are amended, and new claims 20-30 are added. No new matter is added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Applicants appreciate the Examiner's allowance of claims 13 and 14 and indication that claims 2-3, 6-7, 16 & 18-19 would be allowed if rewritten in independent form.

Claim 12 was objected to for improperly depending from itself. Applicants have amended claim 12 to properly depend from claim 1, and therefore request withdrawal of this objection.

Claims 1-3, 5-14 & 16-19 were rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for omitting essential elements of the invention. Specifically, the Examiner asserts that the claims omitted an essential "ultrasonics" element. *See* 9/15/05 Office Action, p. 3. This rejection is substantively an enablement rejection under 35 U.S.C. § 112, ¶ 1, and Applicants traverse it. *See* MPEP § 2172.01 ("A claim which omits matter disclosed to be essential to the invention as described in the specification or in other statements of record may be rejected under 35 U.S.C. 112, first paragraph, as not enabling."). With regard to claims 13 and 14, the examiner allowed these claims, but apparently accidentally included claims 13 and 14 in the indefiniteness rejection. To the extent that the Examiner intended to reject claims 13 and 14 as indefinite (or non-enabled), Applicants traverse the rejection. One or more embodiments of the present invention may be used in conjunction with an "ultrasonics" element, but an ultrasonics element is not essential to the invention. Indeed, Applicants expressly stated in their originally filed application that "[w]hile the diverter assembly 10 has been described in connection with an ultrasonic cleaner, it is contemplated that the diverter assembly 10 can be used in *other cleaning devices*. Furthermore, it is contemplated that the diverter assembly 10 may be used in other *applications outside of cleaning*." Originally filed specification, ¶ [0032] (emphasis added). Applicants therefore respectfully request the withdrawal of the indefiniteness (or enablement) rejection of independent claim 13 and its respective dependent claim 14.

With regard to claims 1-3, 5-7, 9-12 & 16-19, Applicants have added the recitation of an "ultrasonic transducer" to independent claims 1 and 5. Dependent claims 2-3, 6-12, and 16-19 incorporate the "ultrasonic transducer" recitation by reference to their respective base

independent claims 1 and 5. Applicants therefore request the withdrawal of the indefiniteness (or enablement) rejection of claims 1-3, 5-12 & 16-19.

Applicants note that new independent claim 24 does not recite an “ultrasonics” element because, as discussed above, an “ultrasonics” element is not essential to the invention.

Claims 1-3, 5-14 & 16-19 were rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite because it is unclear whether the claims are in Jepson form. Applicants submit that these claims are clearly not Jepson-type claims. However, Applicants have deleted the term “improved” from the preambles of independent claims 1 and 5 to address the Examiner’s apparent concern about Applicants’ use of that term. Applicants therefore request withdrawal of the indefiniteness rejection of these claims.

Claims 1 and 17 were rejected under 35 U.S.C. § 102(e) as being anticipated by Frattini *et al.* (U.S. Pat. No. 6,396,892). Applicants traverse this rejection as applied to amended claim 1. Claim 1 recites a flow diverter assembly which switches a flow path and which has two positions, a by-pass and an engaged position. Frattini discloses filtration piping (32) and an emergency cooling hole (30), the elements relied upon by the Examiner for the claimed flow diverter assembly. However, piping and a hole neither switch nor have multiple positions. Therefore, Frattini fails to disclose or suggest the combination of recitations in claim 1. Nonetheless, Applicants further distinguish claim 1 from Frattini by incorporating some of the subject matter of dependent claim 2 into claim 1. The Examiner has already indicated that claim 2 includes allowable subject matter. Frattini fails to disclose or suggest that “the flow diverter assembly comprises a movable member that is movable between the by-pass position and the engaged position,” as recited in amended claim 1. Accordingly, Applicants respectfully submit that amended claim 1, as well as its dependent claim 17, are patentable over Frattini. Applicants therefore request the withdrawal of the anticipation rejection of claims 1 and 17.

Claims 5 and 9-11 were rejected under 35 U.S.C. § 103(a) as being obvious over Frattini. Applicants traverse this rejection as applied to amended claim 5 for substantially the same reasons as discussed above with regard to claim 1. Nonetheless, Applicants further distinguish claim 5 from Frattini by incorporating some of the subject matter of claim 6 into claim 5. The Examiner has already indicated that claim 6 includes allowable subject matter. Frattini fails to disclose that “each flow diverter assembly comprises a movable member that is movable between the by-pass position and the engaged position,” as recited in amended

claim 5. Accordingly, Applicants respectfully submit that amended claim 5 is allowable, as are its dependent claims 9-11, which are allowable at least because they depend from allowable claim 5.

Applicants traverse the obviousness rejections of claims 10 and 11 for an additional reason. Claims 10 and 11 depend from claims 6 and 7, respectfully. The Examiner has indicated that claims 6 and 7 are allowable (but for the fact that they are in dependent form). Applicants therefore submit that claims 10 and 11 are allowable at least because they depend from allowable claims 6 and 7. Applicants therefore request the withdrawal of the obviousness rejection of claims 10 and 11.

Applicants traverse the obviousness rejection of claim 9 for an additional reason. Claim 9 recites, among other things, that “both flow diverter assemblies open slightly to allow some bypass flow when both housing assemblies are empty.” Frattini does not disclose or suggest such a combination of recitations. Indeed, the Examiner does not identify how Frattini discloses or suggests these recitations. Instead, the Examiner asserts that “the intended use of the apparatus does not structurally differentiate from the apparatus of FRATTINI.” 9/15/05 Office Action, p. 3. To the contrary, claim 9’s recitation of the slight openability of the flow diverter assemblies structurally limits the claimed flow diverter assemblies. The Examiner improperly ignores this structural limitation. Accordingly, Applicants respectfully request the withdrawal of the obviousness rejection of claim 9.

New claims 20-30 further distinguish aspects of one or more embodiments of the present invention from Frattini. For example, Frattini fails to disclose or suggest that “the flow path with the fuel pool is closed when the flow diverter assembly is in the engaged position,” as recited in claim 20. Frattini fails to disclose or suggest that “the flow path with the suction line to the filter and pump assembly is closed when the flow diverter assembly is in the by-pass position,” as recited in claim 21. Frattini fails to disclose or suggest that “the first flow diverter assembly closes the flow path between the first housing assembly and the fuel pool when the first flow diverter assembly is in the engaged position,” as recited in claim 22. Frattini fails to disclose or suggest that “the first flow diverter assembly closes the flow path between the first housing assembly and the suction line to the filter and pump assembly when the first flow diverter assembly is in the by-pass position,” as recited in claim 23.

Applicants respectfully submit that the claims define subject matter that is patentable over the prior art of record. Should any issues require further resolution, the Examiner is requested to telephone Applicants’ undersigned attorney to discuss and resolve these issues.

GROSS ET AL. -- 10/628,559  
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Reconsideration and allowance of the above-identified application in view of the above remarks are respectfully requested. Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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